

PART 705—FINANCIAL ADMINISTRATION

AUTHORITY: 5 U.S.C. 5514 and 5 CFR 550.1101.

§ 705.1 Salary offset

(a) *Purpose.* This part describes the rights of current and former staff members in the collection of debts owed to the Federal Government by them and sets out the procedures for collecting debts through deductions from their pay following due process.

(b) *Definitions.*—(1) *Debt* is an amount owed to the U.S. Government from insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(2) *Disposable pay*, for purposes of this part, means that part of current basic pay, special pay, incentive pay, retirement pay, retainer pay, or other authorized pay remaining after the deduction of any amount required by law to be withheld, such as Federal taxes, retirement, court-ordered payments, and FICA.

(3) *Staff member* refers to current and former employees who owe debts to the Library and/or other Federal Government agencies.

(c) *Procedures*—(1) *Notification of indebtedness.* The Director of Human Resources, or designee, shall notify the staff member, in writing, of the individual's indebtedness to the Library and the intention of the Library to collect this debt by deductions from the individual's pay. This notice shall be given not less than 30 days before any deduction is made. This notice shall state, at a minimum:

(i) The Library's determination that a debt is owed, including the origin, nature, and amount of the debt;

(ii) The Library's intention to collect the debt by means of deduction from the staff member's disposable pay account;

(iii) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(iv) An explanation of the Library's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused;

(v) The staff member's right to inspect and to copy Government records relating to the debt or, if he or she or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(vi) If not previously provided, the opportunity (under terms agreeable to the Library) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for the repayment of the debt in lieu of offset (the agreement must be in writing, signed by both the staff member and the Library, and documented in the Library's files);

(vii) The staff member's right to a hearing conducted by an official arranged for or engaged by the Library (an administrative law judge or, alternatively, a hearing official not under the control of the Librarian of Congress) if a petition is filed as prescribed by the Library;

(viii) The method and time period for petitioning for a hearing;

(ix) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(x) That a final decision on the hearing, if one is requested, will be issued at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing unless the staff member requests and the hearing official grants a delay in the proceedings;

(xi) That any knowingly false or frivolous statements, representations, or evidence may subject the staff member to

(A) Disciplinary procedures appropriate under Library of Congress Regulation 2020-3, or any other applicable regulations or statutes,

(B) Penalties under the False Claim Act, Section 3729 of Title 31, U.S. Code, or any other applicable statutory authority, or

(C) Criminal penalties under Sections 286, 287, 1001, and 1002 of Title 18, U.S. Code, or any other applicable statutory authority;

Library of Congress

§ 705.1

(xii) Any other rights and remedies available to the staff member under statutes or regulations governing the program for which the collection is being made;

(xiii) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the staff member;

(xiv) That if the staff member elects not to contest the determination of indebtedness or the amount or the terms of a repayment schedule, the staff member may still wish to exercise the right to request a waiver of the collection of the indebtedness pursuant to the provisions of Library of Congress Regulation 1556, *Claims* (if the amount of the indebtedness exceeds \$1,500, the staff member should be advised that a final determination must be made by the Comptroller General of the United States); and

(xv) That any involuntary payments already made or withheld from salary of any portion of the indebtedness will not be construed as a waiver by the staff member of any rights that he or she may have under this part.

(2) *Amount of deduction.* If possible, the debt shall be collected in one lump sum. If multiple deductions are necessary, however, the amount deducted from a staff member's pay for any single period will not exceed 15 percent of disposable pay, except that a greater percentage may be deducted upon the written consent of the individual involved. The staff member may enter into a written agreement for a repayment schedule different from that proposed so long as the terms are approved by the Library. If the individual retires or resigns or if his or her employment otherwise ends before collection of the amount of the indebtedness is completed, deduction shall be made from subsequent payments of any nature due the individual.

(3) *Petitions for hearing.* (i) To elect a hearing, the staff member must notify the Director, Human Resources, no later than 15 days after the receipt of the notification of indebtedness. A timely filing of a petition for hearing will stay any further commencement of

collection proceedings. A final decision on the hearing will be issued at the earliest practicable date, but not later than 60 days after the filing of petition, unless the individual requests and the hearing official grants a delay in the proceedings.

(ii) The petition or statement must be signed by the staff member and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, which he or she believes supports his or her position.

(iii) Petitions for hearings made later than 15 days after the receipt of the notification of indebtedness will be accepted provided the staff member can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(4) *Form of hearings and final decisions.* (i) The staff member shall be provided an appropriate hearing as decided by the hearing official, based on the nature of the transactions giving rise to the debt. The hearing official shall be guided by the procedures set out in 4 CFR 102.3(c) in deciding on the type of hearing to provide.

(ii) A written decision will be provided to the staff member and must, at a minimum, state the fact(s) purported to support the nature and origin of the alleged debt; the hearing official's analysis, findings, and conclusions, in light of the hearing, as to the staff member's or the Library's grounds; the amount and validity of the alleged debt; and, where applicable, the repayment schedule.

(d) *Creditor agency is not the Library of Congress.* When the Library receives from a creditor agency a debt claim properly certified in accordance with 5 CFR 550.1108(a), deductions shall be scheduled to begin at the next officially established pay interval. The Director, Human Resources, shall provide the employee with written notice stating that the Library has received a certified debt claim from the creditor agency (including the amount) and written notice of the date deductions from salary will commence and of the amount of such deductions. When the Library receives an incomplete debt

§ 705.1

claim from a creditor agency, the Director, Human Resources, shall return the debt claim with a written notice that procedures under 5 U.S.C. 5514 must be followed and a properly determined debt claim received before action will be taken to collect from the employee's pay account.

(e) *Exclusions and exceptions.* (1) This part does not apply to debts where collection of the debt is explicitly provided for or prohibited by another statute, or to debts of \$1 or less, which, it is hereby determined, is not cost effective to attempt to collect (65 Comp. Gen. 843, September 29, 1986).

36 CFR Ch. VII (7–1–02 Edition)

(2) An exception to the entitlement of notice, hearings, written responses, and final decisions provided for under paragraph (c) of this section is made for overpayments arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

[59 FR 38367, July 28, 1994]

PARTS 706–799 [RESERVED]